

TITLE 1: GOVERNMENT AND ADMINISTRATION

DIVISION 3. PERSONNEL

Chapter 7: Disqualification of Former Officers and Employees.

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13.070 Title and Legislative Intent.

This chapter shall be known as and may be cited as "The Ethics in San Bernardino County Government Act." It is the declared intent of the Board of Supervisors that the provisions of Code of Civil Procedure section 1021.5 should be applicable to private enforcement of this chapter.

(a) The legislative intent of the Board of Supervisors in enacting sections 13.071 through 13.078 of this chapter is to protect the County and public from the potential conflict of interest and harm which may occur when the former officers and employees take with them information which is not readily available to or accessible by the public or press upon leaving County government and thereafter attempt to use such information for the private economic advantage or gain.

(b) The legislative intent of the Board of Supervisors in enacting sections 13.079 through 13.0710 of this chapter is to expand and fortify the ethical standards that are applicable to County officers and employees. It is the intent of the Board of Supervisors that these standards shall apply to all County officers and employees in addition to the legal requirements of Government Code section 1090, 1126, 87100 and any other provisions of the Government Code applicable to County employment.

Adopted Ordinance #3293 (1988); Amended Ordinance 3971 (2006)

13.071 Definitions.

Unless the contrary is stated or is clearly apparent from the context, the definitions set forth in this section shall govern the interpretation of this chapter.

(a) "Administrative Agency" means every County office, department, division, bureau, board and commission listed in the County Code, Section 13.0618(a), but does not include the courts.

(b) "Administrative Official" means every member, officer, employee or consultant of a County administrative agency or members of the Board of Supervisors or their staff who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity. "Consultant" means any natural person who as an independent contractor provides advice, recommendation or counsel to the County and who has acquired access to information which is not readily available to or accessible by the public or press.

(c) "Judicial, Quasi-Judicial, or Other Proceeding" means any proceeding, application, request for ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in any court or County administrative agency and includes, but is not limited to, administrative adjudicatory proceedings.

(d) "Participated" means to have personally and substantially taken part through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, or investigation, but excluding approval, disapproval or rendering of legal advice to departmental or agency staff which do not involve a specific party or parties.

Adopted Ordinance #3293 (1988);

13.072 Representation by Former Administrative Official as Agent or Attorney Before Court or County Agency; Appearance or Communication; Prohibition.

No former administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person, except the County of San Bernardino, before any court or administrative agency or any officer or employee thereof, by making any formal or

informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial, or other proceeding if the County of San Bernardino is a party or has a direct and substantial interest and either of the following apply:

(a) The former administrative official was a member of the Board of Supervisors or a staff member thereof, County Administrative Officer or member of such officer's staff, county department head, assistant county department head, or an employee in the Exempt Group, Management Unit or Safety Management Unit and one (1) year has not elapsed from the last day of active county employment.

(b) The proceeding or specific pending matter is one in which the former administrative official participated.

Adopted Ordinance #3293 (1988); Amended Ordinance 3802 (2000)

13.073 Prohibition of Aid, Advice or Counsel by Former Official if Appearance Prohibited Pursuant to Section 13.072.

No former administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person, except the County of San Bernardino, in any proceeding in which the official would be prohibited from appearing under Section 13.072.

Adopted Ordinance #3293 (1988);

13.074 Exemptions From the Prohibitions of Sections 13.072 and 13.073.

The prohibitions contained in Sections 13.072 and 13.073 shall not apply:

(a) To prevent a former administrative official from making or providing a statement, which is based on the former administrative official's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received other than that regularly provided for by law or regulation for witnesses; or

(b) To communications made solely for the purpose of furnishing information by a former administrative official if the administrative agency to which the communication is directed, makes findings in writing that (1) the former administrative official has outstanding and otherwise unavailable qualifications; (2) the former administrative official is acting with respect to a particular matter which requires such qualifications and (3) the public interest would be served by the participation of the former administrative official; or

(c) With respect to appearances or communications in a proceeding in which a court or administrative agency has issued a final order, decree, decision or judgment but has retained jurisdiction, if the administrative agency of former County employment gives its consent by determining that (1) at least five years have elapsed since the termination of the former administrative official's employment or term of office and (2) the public interest would not be harmed.

(d) To any former administrative official who has left County employment or service for other government employment or service as long as he or she is employed or serves in that capacity.

Adopted Ordinance #3293 (1988);

13.075 Exclusion of Violator; Petition; Hearing.

Upon the petition of any interested person or party or resident of San Bernardino County, the court or the presiding or other officer, including but not limited to a hearing officer serving in an administrative capacity for the County, in any judicial, quasi-judicial or other proceeding including administrative proceedings may, after notice and an opportunity for a hearing, exclude any person found to be in violation of this chapter from further participation, or from assisting or counseling any other participant, in the proceeding then pending before such court or presiding or other officer.

Adopted Ordinance #3293 (1988);

13.076 Criminal Penalty.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, the penalty shall be a fine of not more than one thousand dollars (\$1,000.00) or imprisonment in the county jail for a period of not more than six (6) months or by both such fine and imprisonment.

Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, or permitted by such person and shall be punishable accordingly.

Adopted Ordinance #3293 (1988); Amended Ordinance 3802 (2000)

13.077 Civil Action.

In addition to the criminal penalties provided in Section 13.076 and the injunctive and other relief provided in Section 13.075, any interested person or party or resident of San Bernardino County may initiate a civil action to prevent violation of this chapter and to enforce this chapter.

If a person in such civil action is found to be in violation of this chapter, such person shall be required by the court to pay any compensation received back to the payor and shall also pay a civil fine in an amount not to exceed one thousand dollars (\$1,000) for a first violation and in an amount not to exceed ten thousand dollars (\$10,000) for a second or additional violation. Such civil fines shall be payable to the County Treasurer.

Any person initiating civil action pursuant to this section shall file a copy of the complaint with the Clerk of the Board of Supervisors within ten (10) calendar days of filing with the court.

Adopted Ordinance #3293 (1988);

13.078 Chapter Application Prospective.

The requirements imposed by this article shall not apply to any person who left County service prior to the effective date of this chapter except that any such person who returns to County service on or after the effective date of this chapter shall thereafter be covered thereby.

Adopted Ordinance #3293 (1988);

13.079 Timely Filing of Statements of Economic Interest.

(a) All County officers, employees and members of County boards, committees and commissions who are required by law or by an applicable Conflict of Interest Code to file a Form 700, Statement of Economic Interest, are expected to comply with all applicable time deadlines, and file all Statements of Economic Interest on a timely basis.

(b) Any filing officer whose duties include accepting for filing Statements of Economic Interest completed by any County officer, employee or member of a County board, committee or commission shall notify all such officers, employees, or board members of the designated time deadline for the filing of the Form 700, Statement of Economic Interest. If any such officer, employee or member of a board, committee, or commission fails to file within the designated time deadline, the filing officer shall impose the fine as specified in Government Code section 91013, which is currently the amount of ten dollars (\$10) per day, up to a maximum of one hundred dollars (\$100). Liability need not be enforced by the filing officer if, on an impartial basis, he or she determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the Political Reform Act, except that no liability shall be waived if a statement of economic interest is not filed within thirty (30) days after the filing officer has sent specific written notice of the filing requirement. If, after notice and imposition of the maximum fine, the County officer, employee, or member of a County board, committee or commission fails to file the Form 700 Statement of Economic Interest, the filing officer shall refer the person to the Fair Political Practices Commission and the District Attorney for enforcement action.

(c) No filing officer shall be subject to criminal penalties for violation of this section, unless that violation is knowing and willful.

Adopted Ordinance #3971 (2006);

13.0710 Violation of County Policy regarding Bidding or Purchase at Sales and Auctions of County Property.

(a) County Policy 11-11 reads as follows:

"POLICY STATEMENT: It is the policy of the Board of Supervisors that the disposal by the County of any County property (real or personal) authorized by statute or County policy be conducted in a fair manner. County employees are prohibited from bidding or purchasing either directly or indirectly through an intermediary at auctions or other sales of County property. This prohibition is in addition to any prohibitions or limitations contained in any other County Policies.

POLICY AMPLIFICATION:

1. "County employee" is defined, for purposes of this policy, as any employee of the County, including but not limited to regular, contract, extra help, or recurrent employee.

2. "Auctions" of property include any sale or disposal of County property conducted by or on behalf of the County or any of its elected or appointed officials in the execution or implementation of the County's statutory duties.

3. "County Property" includes all property (real or personal), owned by the County and disposed of by the County or any of its elected or appointed officials in the course of statutory duties. This includes, but is not limited to, County surplus property, property that has been seized by the Sheriff in the performance of that office's duties, and any property that a department may have been awarded by a court in any civil or criminal action.

4. The Board of Supervisors may waive the application of this policy to any individual County employee upon a showing of good cause, and approval of the waiver by the Board of Supervisors in open session."

(b) Unless a waiver is approved by the Board of Supervisors, any County employee in the Exempt Group or any County elected official who violates County Policy 11-11 is guilty of a misdemeanor and, upon conviction thereof, the penalty shall be a fine of not more than one thousand dollars (\$1,000) or imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment.

Adopted Ordinance #3971 (2006);